Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 01-38-1992
JEMURI SERJAN CJ (BORNEO), EDGAR JOSEPH JR AND MOHAMED DZAIDDIN SCJJ
2 APRIL 1994

Labour Law — *Employment — Dismissal — Employee a police inspector — Dismissed by Inspector General of Police for unsatisfactory work or misconduct — Application for certiorari to quash decision of Inspector General of Police — Whether decision unreasonable — Police Officers (Conduct and Discipline) General Orders (Cap 'D') 1980 GO 23 & GO 26*

Labour Law — *Employment — Dismissal — Employee a police inspector — Dismissed by Inspector General of Police for unsatisfactory work or misconduct — Application for certiorari to quash decision of Inspector General of Police — No oral hearing held — Whether breach of natural justice — Police Officers (Conduct and Discipline) General Orders (Cap 'D') 1980 GO 23 & GO 26*

Words and Phrases — *'Right to be heard' — Whether oral hearing necessary*

The appellant was a police inspector in the Royal Malaysian Police. The Inspector General of Police ('the respondent') dismissed the appellant on the grounds that the appellant was guilty of unsatisfactory work or misconduct. Dissatisfied with the decision of the respondent to dismiss him, the appellant applied for an order of certiorari to quash that decision, arguing that the appellant was denied the right to an oral hearing, as his dismissal called for an inquiry and representation by counsel. The High Court judge dismissed the application, holding that there was no breach of natural justice and that the opportunity to be heard did not mean the right to be heard orally and the question of legal representation, therefore, did not arise. In this appeal, the court dealt with only two questions: (a) the issue of unreasonableness of the decision; and (b) the plea of breach of natural justice.

Held, dismissing the appeal:

(1) What the appellant meant when he said that the dismissal was 'unreasonable' was that under the circumstances of the case and having regard to the evidence, the decision was vitiated by a breach of natural justice in that he was not given the opportunity to explain, correct or contradict what he considered to be a statement adverse to his case. When counsel used the word 'unreasonable' he did not have the Wednesbury types of unreasonableness in mind. There was nothing new in the statement which would jeopardize the appellant's case and strengthen the respondent's case. All that ought to be known by the appellant

and used by the respondent against him were already made known to the appellant. Therefore, the case of unreasonableness or breach of natural justice in respect of a further statement was not made out and counsel's arguments on that ground failed.

(2) The respondent had complied with the provisions of GO 23 and GO 26 of the Police Officers (Conduct and Discipline) General Orders (Cap 'D') 1980 ('the 1980 General Orders'). Following the procedure set out in GO 26, the respondent had correctly sent the appellant a show cause letter following closely the provisions of paras 1, 2 and 4. The show cause letter set out the grounds on which it was proposed to dismiss the appellant and invited him to furnish the respondent with a written statement which was accordingly furnished in great detail. Only when the respondent was satisfied that the written representation did not exculpate the appellant did he decide to dismiss him. Under para 4 of GO 26, only if the respondent considers that the case against the appellant requires further clarification is he obliged to appoint a committee of inquiry. In such an event, both parties may be legally represented. Under the circumstances, the procedure adopted by the respondent did not in any way involve prejudice to the appellant.

(3) The 'right to be heard' does not mean the right to be heard orally. What it means is that the officer concerned should be given a full opportunity of stating his case.

[Bahasa Malaysia summary

Perayu merupakan seorang inspektor polis di dalam Polis Di Raja Malaysia. Ketua Polis Negara ('responden itu') telah memecat perayu atas alasan bahawa perayu bersalah kerana tidak melakukan kerja beliau dengan sempurna atau kerana salah laku beliau. Oleh kerana tidak berpuas hati dengan keputusan responden memecat beliau, perayu telah memohon untuk suatu perintah certiorari supaya membatalkan keputusan itu, dan mengatakan bahawa perayu telah dinafikan hak beliau untuk mendapat suatu pendengaran lisan, kerana pemecatan beliau memerlukan suatu siasatan dan suatu perwakilan dibuat oleh peguam. Hakim Mahkamah Tinggi telah menolak permohonan itu, dengan memutuskan bahawa tidak terdapat kemungkiran keadilan asasi dan bahawa peluang supaya perayu dapat didengar tidak bermaksud bahawa beliau berhak didengar secara lisan dan oleh itu, soalan mengenai perwakilan guaman tidak timbul. Di dalam rayuan ini, mahkamah telah mempertimbangkan dua soalan sahaja: (a) isu ketidak patutan keputusan itu; and (b) pli kemungkiran keadilan asasi.

Diputuskan, menolak rayuan itu:

(1) Apa yang dimaksudkan oleh perayu apabila beliau mengatakan bahawa pemecatan itu adalah tidak berpatutan adalah bahawa di dalam kedaaan kes itu dan memandangkan keterangan, keputusan

itu dijadikan tidak sah oleh kemungkiran keadilan asasi kerana beliau tidak diberi kesempatan untuk menerangkan, membetulkan atau menyangkal apa yang beliau sifatkan sebagai suatu pernyataan yang memburukkan kesnya. Apabila peguam menggunakan perkataan 'ketidak patutan' beliau tidak memikirkan tentang jenis-jenis ketidak patutan Wednesbury. Tidak terdapat apa-apa yang baru di dalam pernyataan lanjut perayu yang akan memburukkan kes perayu dan menguatkan kes responden. Segala yang patut diketahui oleh perayu dan yang telah digunakan oleh responden terhadapnya telah diberitahu kepada perayu. Oleh itu, kes mengenai ketidak patutan atau kemungkiran keadilan asasiberkenaan dengan pernyataan lanjut tidak ditunjukkan dan hujahan peguam atas alasan itu gagal.

(2) Responden telah mengikut peruntukan GO 23 dan GO 26 Perintah Am Pegawai-Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980. Mengikut prosedur yang dinyatakan di dalam GO 26, responden telah menghantar perayu suatu surat menunjuk kausa dengan betul dan mengikut dengan terperinci peruntukan perenggan 1, 2 dan 4. Surat menunjuk kausa itu telah menyatakan alasan mengapa perayu dipecat dan memberi beliau peluang untuk memberi responden suatu pernyataan bertulis yang kemudiannya telah diberi dengan amat terperinci. Responden hanya memutuskan untuk memecat perayu apabila responden berpuas hati bahawa pernyataan bertulis itu tidak melepaskan perayu. Di bawah perenggan 4 GO 26, responden hanya berkewajipan untuk melantik suatu jawatankuasa siasatan jika responden berpendapat bahawa kes terhadap perayu itu memerlukan penjelasan selanjutnya. Di dalam keadaan sedemikian, kedua-dua pihak boleh diwakili di sisi undang-undang. Di dalam keadaan sedemikian, prosedur yang digunakan oleh responden tidak dalam apa cara sekalipun memudaratkan perayu.

(3) 'Hak untuk didengar' tidak bermakna hak under didengar secara lisan. Apa yang di maksudkan olehnya adalah bahawa pegawai berkenaan harus diberi peluang yang penuh untuk menyatakan kesnya.]

Notes

For cases on the termination of the services of an employee, see 8 *Mallal's Digest* (4th Ed) paras 512–523 and 637–665; [1989] Mallal's Digest 949; [1991] Mallal's Digest 1272–1274 and 1313–1315.

Cases referred to

1 *Najar Singh v Government of Malaysia & Anor* [1974] 1 MLJ 138; [1976] 1 MLJ 203 (folld)

2 *Zainal bin Hashim v Government of Malaysia* [1979] 2 MLJ 276 (refd)

A
3 *Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers* [1991] 1 MLJ 417 (refd)
4 *Associated Provincial Picture Houses v Wednesbury Corp* [1948] 1 KB 223; [1947] 2 All ER 680 (refd)
5 *Griffiths (Inspector of Taxes) v JP Harrison (Watford) Ltd* [1962] 1 All ER 909; [1963] AC 1; [1962] 2 WLR 909 (refd)
B
6 *Bromley London Borough Council v Greater London Council* [1983] 1 AC 768; [1982] 1 All ER 153; [1982] 2 WLR 92 (refd)
7 *Shamsiah bte Ahmad Sham v Public Services Commission, Malaysia & Anor* [1990] 3 MLJ 364 (refd)
8 *Council of Civil Service Union v Minister for the Civil Service* [1985]
C AC 374; [1984] 3 All ER 935; [1984] 1 WLR 1174 (refd)
9 *Local Government Board v Arlidge* [1915] AC 120 (refd)
10 *Kavanagh v Chief Constable of Devon and Cornwall* [1974] 1 QB 624; [1974] 2 All ER 697; [1974] 2 WLR 762 (refd)
11 *Jeffs v New Zealand Dairy Production and Marketing Board & Ors*
D [1967] 1 AC 551; [1966] 3 All ER 863; [1967] 2 WLR 136 (refd)
12 *A-G v Ryan* [1980] AC 718; [1980] 2 WLR 143 (refd)
13 *Lloyd v McMahon & Anor* [1987] AC 625; [1987] 1 All ER 1118; [1987] 2 WLR 821 (refd)
14 *Twist v Randwick Municipal Council* [1976] 136 CLR 106 (refd)

E
Legislation referred to
Public Officers (Conduct and Discipline) General Orders (Cap 'D') 1980 GO 23, GO 24, GO 26

Appeal from: Originating Summons No 25–49–1992 (High Court,
F Penang)

Mohd Ismail bin Mohamed (*Ismail, Khoo & Associates*) for the appellant.
Haliza Aini bte Dato' Othman (Senior Federal Counsel) for the respondent.

G
Cur Adv Vult

Jemuri Serjan CJ (Borneo) (delivering the judgment of the court): The appellant was formerly, before his dismissal, a police inspector in the Royal Malaysian Police stationed at the material time, at Pulau Tikus, IPD Georgetown, Pulau Pinang. On 10 March 1990, he received a letter to
H show cause from the Penolong Ketua Urusetia KPN (Tatatertib), on behalf of the Inspector General of Police ('the respondent'), to the effect that the respondent, acting pursuant to the powers delegated to him by the Police Force Commission, had decided to take disciplinary action against the appellant under GO 26 of the Public Officers (Conduct and Discipline)
I General Orders (Cap 'D') 1980 ('the 1980 General Orders'). It was represented to the respondent that the appellant was guilty of unsatisfactory work or misconduct which in his opinion merited dismissal.

Under the circumstances, the respondent proposed to dismiss the appellant on the grounds contained in the following eight charges:

1.1 Pertuduhan pertama

Bahawa anda, seorang pegawai awam, iaitu inspektor, dalam Pasukan Polis Di Raja Malaysia, semasa bertugas sebagai inspektor kawasan Pulau Tikus, IPD Georgetown, Pulau Pinang, telah didapati tidak jujur kerana telah menerima wang sogokan sebanyak RM500 dari seorang lelaki Cina bernama Chua Swee Seng @ Tee Kia (KP: 8131188) pada bulan Julai 1988 di kedai kopi Kin Too, No 128, Jalan Sean Teik, Georgetown, Pulau Pinang untuk memberi perlindungan ke atas kegiatan penyeludupan yang dijalankan oleh sindiketnya di kawasan Gertak Sanggol, Balik Pulau, Pulau Pinang dalam tempoh yang berkenaan dan oleh yang demikian anda telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(f), Perintah Am Pegawai-Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980.

1.2 Pertuduhan kedua

Bahawa anda, seorang pegawai awam, iaitu inspektor, dalam Pasukan Polis Di Raja Malaysia, semasa bertugas sebagai inspektor kawasan Pulau Tikus, IPD Georgetown, Pulau Pinang, telah didapati tidak bertanggungjawab iaitu anda telah tidak melaporkan kepada pegawai atasan anda bersabit kegiatan penyeludupan yang dijalankan oleh Chua Swee Seng @ Tee Kia (KP: 8131188) dan sindiketnya pada bulan Julai 1988 di kawasan Gertak Sanggol, Balik Pulau, Pulau Pinang dan oleh yang demikian anda telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(g), Perintah Am Pegawai-Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980.

1.3 Pertuduhan ketiga

Bahawa anda, seorang pegawai awam, iaitu inspektor, dalam Pasukan Polis Di Raja Malaysia, semasa bertugas sebagai inspektor kawasan Pulau Tikus, IPD Georgetown, Pulau Pinang, telah didapati tidak bertanggungjawab, iaitu anda telah tidak mengambil tindakan polis ke atas Chua Swee Seng @ Tee Kia (KP: 8131188) dan sindiketnya bersabit kegiatan penyeludupan yang telah dijalankan oleh mereka di kawasan Gertak Sanggol, Balik Pulau, Pulau Pinang sepanjang bulan Julai 1988 dan oleh yang demikian anda telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(g), Perintah Am Pegawai-Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980.

1.4 Pertuduhan keempat

Bahawa anda seorang pegawai awam, iaitu inspektor, dalam Pasukan Polis Di Raja Malaysia, semasa bertugas sebagai inspektor kawasan Pulau Tikus IPD Georgetown, Pulau Pinang, telah didapati tidak jujur kerana telah menerima wang sogokan sebanyak RM500 dari seorang lelaki Cina bernama Chua Swee Seng @ Tee Kia (KP: 8131188) pada 2 September 1988 di Kuaters Pegawai, Batu Lanchang, Jalan Lanas, Pulau Pinang kerana memberi perlindungan ke atas kegiatan penyeludupan yang dijalankan oleh sindiketnya di kawasan Gertak Sanggol, Balik Pulau, Pulau Pinang dalam tempoh yang berkenaan dan oleh yang demikian anda telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(f), Perintah Am Pegawai-Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980.

1.5 Pertuduhan kelima

Bahawa anda, seorang pegawai awam, iaitu inspektor, dalam Pasukan Polis Di Raja Malaysia, semasa bertugas sebagai inspektor kawasan Pulau Tikus, IPD Georgetown, Pulau Pinang, telah didapati tidak bertanggungjawab, iaitu anda telah tidak mengambil tindakan polis ke atas Chua Swee Seng @ Tee Kia (KP: 8131188) dan sindiketnya bersabit kegiatan penyeludupan yang telah dijalankan oleh mereka di kawasan Gertak Sanggol, Balik Pulau, Pulau Pinang pada 2 September 1988 dan oleh yang demikian anda telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(g), Perintah Am Pegawai-Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980.

1.6 Pertuduhan keenam

Bahawa anda, seorang pegawai awam, iaitu inspektor, dalam Pasukan Polis Di Raja Malaysia, semasa bertugas sebagai inspektor kawasan Pulau Tikus, IPD Georgetown, Pulau Pinang, telah didapati tidak bertanggungjawab, iaitu anda telah tidak melaporkan kepada pegawai atasan anda bersabit kegiatan penyeludupan yang telah dijalankan oleh Chua Swee Seng @ Tee Kia (KP: 8131188) dan sindiketnya pada 2 September 1988 di kawasan Gertak Sanggol, Balik Pulau, Pulau Pinang dan oleh yang demikian anda telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(g), Perintah Am Pegawai-Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980.

1.7 Pertuduhan ketujuh

Bahawa anda, seorang pegawai am, iaitu inspektor, dalam Pasukan Polis Di Raja Malaysia, semasa bertugas sebagai inspektor kawasan Pulau Tikus, IPD Georgetown, Pulau Pinang, telah didapati tidak jujur kerana menyubahati Chua Swee Seng @ Tee Kia (KP: 8131188) semasa menjalankan kegiatan penyeludupan pada 2 September 1988 dengan mengiringi beliau ketika pemunggahan barang-barang seludup dijalankan di Gertak Sanggol, Balik Pulau, Pulau Pinang dan oleh yang demikian anda telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(f), Perintah Am Pegawai-Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980.

1.8 Pertuduhan kelapan

Bahawa anda, seorang pegawai awam, iaitu inspektor, dalam Pasukan Polis Di Raja Malaysia, semasa bertugas sebagai inspektor kawasan Pulau Tikus, IPD Georgetown, Pulau Pinang, telah didapati tidak jujur kerana menyubahati Chua Swee Seng @ Tee Kia (KP: 8131188) di dalam menjalankan kegiatan penyeludupan pada 15 November 1988 dengan mengiringinya semasa pemunggahan barang-barang seludup dijalankan di Gertak Sanggol, Balik Pulau, Pulau Pinang dan oleh yang demikian anda telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(f), Perintah Am Pegawai-Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980.

In para 2 of the letter, the appellant was called upon to state in writing within a period of 16 days from the receipt of that letter a representation containing grounds upon which he relied to exculpate himself. In the event that no representation was received within the specified time, the respondent would then proceed to consider taking further action to dismiss the appellant on the evidence available to him.

Accordingly, on 1 April 1990, the appellant, by a letter addressed to the respondent, made a lengthy written representation, denying all the charges and offering his version of the allegation in an attempt to exculpate himself from the charges. The written representation dealt with every aspect of the eight charges, and in some instances a number of case law authorities were cited in support of his contention that he was not guilty of any of the charges. The representation was also accompanied by various documents including a map of the area under his control and entries into his diary pertaining to his duties and activities at his station at the material time referred to in the charges. There were also other documents such as perintah gerakan (standing orders), a police report made by himself on the arrest of 15 employees, a letter applying for a transfer to Kedah or Perlis, an organization chart of Div C of the Royal Malaysian Police, Pulau Pinang and a statutory declaration purportedly made by one Chai Swee Ching alleging that while he was in police detention he was forced, after being assaulted by policemen, to make a statement incriminating the appellant. It was a carefully prepared and detailed representation, most decidedly with the assistance of a lawyer. It was compiled in the form of a book according to his affidavit.

On 3 April 1992, a letter signed by Hj Ahmad Ragib bin Hj Mohd Salleh, Penolong Ketua Urusetia KPN (Tatatertib), on behalf of the respondent, was sent to the appellant informing him that after considering his written representation, the respondent was of the opinion that the written representation failed to exculpate the appellant to the satisfaction of the Inspector General, and under the circumstances, in exercise of his powers as a disciplinary authority, decided to dismiss the appellant on all the eight charges.

Dissatisfied with the decision of the respondent to dismiss him, the appellant applied and obtained leave for an order of certiorari to quash the decision of the respondent under O 53 of the Rules of the High Court 1980. A statement in support of the application under r 1(2) prayed for the following reliefs and gave the grounds on which they were sought:

(1) *Certiorari* — to remove the decision of the Inspector General of Police in the High Court for the purpose of being quashed on the ground that:

   (a) the dismissal dated 3 April 1992 was unreasonable having regard to the evidence and circumstances of the case; and
   (b) inappropriate procedure adopted by the Inspector General of Police because in a case of a serious nature as his dismissal, the Inspector General of Police was obliged to afford him the opportunity to be present and represented by his counsel.

(2) *Reinstatement* as a police inspector together with all the benefits on the ground that there was an error of law on the face of the record and that the Inspector General of Police acted in excess of his jurisdiction.

The English version of the gist of the statement is our own and the Bahasa version of the statement is in the following words:

Pernyataan (Statement)

Nama dan deskripsi pemohon ialah Ghazi bin Mohd Sawi (KP No I/6096) yang beralamat di No 53, Mentaloon, 05250 Alor Setar, Kedah. Relif yang dipohon ialah:

1 Suatu perintah certiorari untuk disidangkan dalam mahkamah yang termulia ini untuk tujuan membatalkan perintah ekoran daripada Tindakan Tatatertib (PR) I/6096 yang dibuat pada 3 April 1992 oleh Ketua Polis Negara di mana:

(a) pembuangan kerja pemohon pada 3 April 1992 adalah tidak berpatutan dengan keadaan dan keterangan kes,

(b) prosedur yang digunakan oleh Ketua Polis Negara adalah tidak sah dan untuk kes pembuangan satu pendengaran mesti diadakan di mana pemohon berhak hadir dan dibantu oleh peguambela.

2 Pemohon dikembalikan ke jawatan asalnya sebagai inspektor dengan semua kelebihan (benefit)nya.

Alasan relif tersebut yang dipohon adalah kesilapan pada muka rekod mengikut undang-undang (error of law in the face of record) kerana Ketua Polis Negara melebihi bidang kuasa dalam Tindakan Tatatertib (PR)I/6096 yang mengakibatkan pembuangan pemohon serta semua lapan (8) tuduhan-tuduhan tersebut adalah tidak berasas langsung.

Bertarikh pada 21 April 1992.

Before we proceed to consider the contention of the appellant, it would be useful to put the appellant's case in the right perspective. Firstly, the decision of the respondent was attacked because it was unreasonable having regard to the evidence and circumstances of the case, and, secondly it is obvious that the appellant's complaint against his dismissal, essentially was because by adopting the procedure under GO 26(1), (2) and (4) the respondent was in breach of the rules of natural justice in that he was not afforded the right to be heard orally and represented by his counsel.

For the purpose of convenience, the relevant provisions of Ch D of the 1980 General Orders are reproduced below:

23 In all disciplinary proceedings under this Part no officer shall be dismissed or reduced in rank unless he has been informed in writing of the grounds on which it is proposed to take action against him and has been afforded a reasonable opportunity of being heard.

Provided that this General Order shall not apply to the following cases:

(a) Where the Appropriate Disciplinary Authority is satisfied that for some reason, to be recorded by it in writing, it is not reasonably practicable to carry out the requirements of this General Order; or

(b) Where the Yang di-Pertuan Agong is satisfied that in the interest of the security of the Federation or any part thereof it is not expedient to carry out the requirements of this General Order.

24 In every case of an alleged breach of discipline by any officer except as provided for under General Order 27 (a) and (b), the Chairman of the

Appropriate Disciplinary Authority shall, in the first instance, before commencing any disciplinary proceeding in the matter, consider whether the breach of discipline complained of is a nature which merits a punishment of dismissal or reduction in rank or a punishment lesser than dismissal or reduction in rank.

...

26(1) Where it is represented to, or is found by, the Appropriate Disciplinary Authority that an officer is guilty of unsatisfactory work or misconduct and such work or misconduct, in the opinion of the Disciplinary Authority, merits dismissal or reduction in rank, the provisions of the following paragraphs shall apply.

(2) The Appropriate Disciplinary Authority shall, after considering all the available information in its possession that there is a prima facie case for dismissal or reduction in rank, cause to be sent to the officer a statement in writing, prepared, if necessary, with the aid of the Legal Department, of the ground or grounds on which it is proposed to dismiss the officer or reduce him in rank and shall call upon him to state in writing within a period of not less than fourteen days from the date of receipt of the letter a representation containing grounds upon which he relies to exculpate himself.

(3) If after consideration of the said representation, the Appropriate Disciplinary Authority is of the opinion that the unsatisfactory work or conduct of the officer is not serious enough to warrant dismissal or reduction in rank, the Disciplinary Authority may impose upon the officer such lesser punishment as it may deem fit.

(4) If the officer does not furnish any representation within the specified time, or if he furnishes a representation which fails to exculpate himself to the satisfaction of the Appropriate Disciplinary Authority, it shall then proceed to consider and decide on the dismissal or reduction in rank of the officer.

(5) Where the Appropriate Disciplinary Authority considers that the case against the officer requires further clarification, it may appoint a Committee of Inquiry consisting of not less than two senior Government officers who shall be selected with due regard to the standing of the officer concerned and to the nature and gravity of the complaints which are the subject of the inquiry, provided that an officer lower in rank than the officer who is the subject of the inquiry or the officer's Head of Department shall not be selected to be a member of the Committee.

(6) The officer shall be informed that, on a specified day, the question of his dismissal or reduction in rank will be brought before the Committee and that he will be allowed and if the Committee shall so determine, shall be required to appear before the Committee and exculpate himself.

(7) If witnesses are examined by the Committee, the officer shall be given an opportunity to be present and to question the witnesses on his own behalf and no documentary evidence shall be used against him unless he has previously been supplied with a copy thereof or given access thereto.

(8) The Committee may, permit the Government or the officer to be represented by an officer in the public service or, in exceptional cases, by an advocate and solicitor and may at any time, subject to such adjournment as is reasonably necessary to enable the officer to present his case in person, withdraw such permission:

A Provided that where the Committee permits the Government to be represented, it shall also permit the officer to be similarly represented.

(9) If, during the course of the inquiry, further grounds for dismissal are disclosed, and the Appropriate Disciplinary Authority thinks fit to proceed against the officer upon such grounds, the officer shall be furnished with a written statement thereof and the same steps shall be taken as are B prescribed above in respect of the original grounds.

(10) The Committee having inquired into the matter, shall make a report to the Appropriate Disciplinary Authority. If the Disciplinary Authority considers that the report is not clear in any respect or that further inquiry is desirable, the matter may be referred back to the Committee for further inquiry and report.

C 'Disciplinary Authority' is also defined in Ch D to mean:

... the appropriate Service Commission whose jurisdiction extends to the service of which the said officer is a member in accordance with the provisions of Part X of the Constitution, and includes an officer or a board of officers in the public service by whom the Commission's function relating to disciplinary D control is exercisable in pursuance of Clauses (5A), (5B) or (6A) of Article 144 of the Constitution.

Since the power of the Police Force Commission in dealing with officers of the rank of inspector and below is delegated to the respondent for the purpose of this appeal he is the disciplinary authority.

E In the High Court, counsel for the appellant argued the appellant's case solely on the plea that the appellant was denied the right to an oral hearing as his dismissal, being a serious matter, called for an inquiry and, equally, representation by counsel. However, somehow or other, counsel also brought up the question of bias and the failure of the respondent to provide reasons F for the dismissal. From the notes of proceedings, it is obvious that the bias issue was abandoned. The learned judge dismissed the application, holding that there was no breach of natural justice and that on the authorities of the Federal Court case of *Najar Singh v Government of Malaysia & Anor*[1] and the Privy Council case of *Zainal bin Hashim v Government of Malaysia*,[2] the opportunity to be heard did not mean the right to be heard orally and the G question of legal representation, therefore, did not arise. However, his Lordship did not consider and decide the question of whether the failure to give reasons for the dismissal was fatal to the validity of the dismissal. On the question of the right to be provided with documents relevant to the proceedings, the learned judge held that there was no law in Malaysia to H compel the respondent to do so, and that the rules of natural justice did not include an obligation to provide the appellant with all the documents to be used against him. His Lordship correctly eschewed consideration of the unreasonableness of the dismissal as it was never brought up and argued the way it should be as a ground for the issue of certiorari although it was stated I in the statement as the first ground for the order of certiorari. Hence the appeal to the Supreme Court.

We must also from the outset point out that under O 53 r 3(1), no grounds should be relied upon or any reliefs sought at the hearing of the motion or summons except the grounds and reliefs set out in the statement, and his Lordship was right in refusing to consider other grounds, ie want of reasons for the dismissal and bias. We would, therefore, in this appeal deal only with two questions: (a) the issue of unreasonableness of the decision; and (b) the plea of breach of natural justice.

We would first deal with the question of unreasonableness. No less than 15 grounds were given in the memorandum of appeal, but some of the grounds were overlapping, repeating the same grounds but couched in different language and we consider it only necessary to deal with the grounds attacking the validity of the decision on the two issues since they are really the main grounds of appeal. Some of the grounds are in the nature of arguments and not grounds of appeal. On the question of unreasonableness, it is unclear from the notes of proceedings and the arguments before us in what sense is the word 'unreasonable' used by the appellant. As we have pointed out in the case of *Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers*,[3] in law, there are two categories of unreasonableness one of which is referred to as comprehensive unreasonableness and the other is a distinct category of unreasonableness altogether which, with reference to a decision, amounts to an absurd or perverted decision which is a perverse finding, so devoid of plausible justification that no reasonable body of persons could have reached it. Both categories are now known as the Wednesbury principles of unreasonableness because they were first pronounced by Lord Greene MR in the case of *Associated Provincial Picture Houses v Wednesbury Corp.*[4] Perhaps, for the purpose of emphasis, it bears repetition to state what Lord Greene MR actually meant when he spoke of the two types of unreasonableness at pp 229 and 234. On the broad or comprehensive unreasonableness, this is how Lord Green MR explained the expression at p 229:

> I am not sure myself whether the permissible grounds of attack cannot be defined under a single head. It has been perhaps a little bit confusing to find a series of grounds set out. Bad faith, dishonesty — those of course, stand by themselves — unreasonableness, attention given to extraneous circumstances, disregard of public policy and things like that have all been referred to, according to the facts of individual cases, as being matters which are relevant to the question. If they cannot all be confined under one head, they at any rate, I think, overlap to a very great extent. For instance, we have heard in this case a great deal about the meaning of the word 'unreasonable'.
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> It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. *For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'.* (Emphasis added.)

A At p 234, Lord Greene MR expressed his view as to what amounted to 'unreasonableness' of the other type. This is his explanation:

> Once that question is answered in favour of the local authority, it may be still possible to say that, although the local authority has kept within the four corners of the matters which they ought to consider, *they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere.* (Emphasis added.)

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He had earlier on at p 230 gave an insight into what this type of unreasonableness is in the following words:

> *It is true to say that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere.* That, I think, is quite right; *but to prove a case of that kind would require something overwhelming*, and, in this case, the facts do not come anywhere near anything of that kind. I think Mr Gallop in the end agreed that his proposition that the decision of the local authority can be upset if it is proved to be unreasonable, really meant that it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body could have come to. It is not what the court considers unreasonable, a different thing altogether. (Emphasis added.)

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Similarly, on the second type of unreasonableness, Lord Denning MR in *Griffiths (Inspector of Taxes) v JP Harrison (Watford) Ltd*[5] at p 916 had this to say:

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> It is now settled, as well as anything can be that their conclusion cannot be challenged unless it was unreasonable, so unreasonable that it can be dismissed as one which could not reasonably be entertained by them. It is not sufficient that the judge would himself have come to a different conclusion. Reasonable people on the same facts may reasonably come to different conclusions: and often do. Jurists do. So do judges. And are they not all reasonable men? *But there comes a point when a judge can say that no reasonable man could reasonably come to that conclusion. Then, but not till then, he is entitled to interfere.* (Emphasis added.)

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Lord Diplock in *Bromley London Borough Council v Greater London Council*[6] explained lucidly this type of unreasonableness in the following words at p 821:

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> The Wednesbury principle has in turn been subjected to sub-division in the course of the argument into decisions reached in the exercise of a statutory discretion that are unlawful because it can be shown that in reaching the decision the body exercising the discretion has acted on an erroneous view of the applicable law; *and decisions that, looked at objectively, are so devoid of any plausible justification that no reasonable body of persons could have reached them.* (Emphasis added.)

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Unfortunately, we did not get much assistance from counsel as he did not elaborate and develop his contention further other than saying that the decision was unreasonable under the circumstances of the case, and having regard to the evidence. To be fair to counsel, he did in fact bring up the question that a further statement was taken from Chai Swee Ching @ Chua Swee Seng @ Tee Kia on 15 August 1990, which was after the written representation was furnished to the respondent, but before the decision was

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conveyed to the appellant to dismiss him. In other words, it is implicit in the appellant's contention that the respondent had taken into consideration prejudicial information which influenced his decision to dismiss the appellant without giving him the opportunity to explain, correct or contradict the statement. Cik Haliza, counsel for the respondent, pointed out that that statement was taken after the decision to dismiss the appellant was made. However, both counsel told us from the Bar, as this question was not raised in the appellant's nor in the respondent's affidavit. It was, however, brought up but not fully argued in the High Court. If, in fact, it could be established that that statement was prejudicial to the appellant's case and taken into consideration without affording the appellant the opportunity to explain, correct or contradict it, and it did in fact influence the decision of the respondent to dismiss the appellant, then it would be a ground for us to intervene, allow the appeal and order the issue of certiorari. Certiorari would lie under these circumstances but would not be on the ground of unreasonableness in the comprehensive sense as explained by Lord Greene MR but on the ground of breach of natural justice. It would be a breach of natural justice because the appellant was denied the right to explain, correct or contradict the statement which he considered to be prejudicial to his case. See *Shamsiah bte Ahmad Sham v Public Services Commission, Malaysia & Anor*[7] at p 369 and the cases cited therein.

So, what the appellant meant when he said the dismissal was 'unreasonable' was that under the circumstances of the case and having regard to the evidence, the decision was vitiated by a breach of natural justice in that he was not given the opportunity to explain, correct or contradict what he considered to be a statement adverse to his case. There is a world of difference in legal concept between unreasonableness in the two senses used by Lord Greene MR in the *Wednesbury Corp* case[4] and natural justice. It seems obvious to us when counsel used the word 'unreasonable' he did not have the Wednesbury types of unreasonableness in mind.

As a matter of interest we have read the further statement, and in our view there was nothing new in it which would jeopardize the appellant's case and strengthen the respondent's case. All that ought to be known by the appellant and used by the respondent against him were already made known to the appellant in the two previous statements made by Chua Swee Seng @ Tee Kia which provided the basis for making the eight charges against the appellant. On the view that we have taken of this issue, the case of unreasonableness or breach of natural justice in respect of a further statement was not made out and the counsel's arguments on this ground must, therefore, fail.

We would interpolate at this juncture to say something about certiorari and the grounds for it to lie. The common law concept of natural justice is already embodied in GO 23 and art 135(2) of the Federal Constitution in so far as the right to be heard is concerned. Since the effect of certiorari is to quash a decision which is void or ultra vires in the broad sense, we need only to consider whether in dismissing the appellant, the respondent had failed to observe the rules of natural justice, apply the Wednesbury principles

of unreasonableness adverted to earlier on, or failed to understand correctly the law that regulates his decision-making power, and give effect to it. Lord Diplock had compendiously classified the grounds for judicial review under three heads, and referred to them as 'procedural impropriety', 'irrationality' and 'illegality'. See the *GCHQ* case — *Council of Civil Service Union v Minister for the Civil Service*[8] at p 410 — as it is now known. Here, in the present appeal, the appellant relied only on the ground of procedural impropriety which until then was popularly referred to as the breach of the rule of natural justice or the denial of the right to be heard. Lord Roskill, at p 414, preferred to call it failure in the duty to act fairly.

On the duty to act fairly, Lord Roskill, after cautioning the courts not to misunderstand and misuse the phrase at pp 414–415, expressed his view on what the phrase means and how it operates in the following words:

> The third is where it has acted contrary to what are often called 'principles of natural justice'. As to this last, the use of this phrase is no doubt hallowed by time and much judicial repetition, but it is a phrase often widely misunderstood and therefore as often misused. That phrase perhaps might now be allowed to find a permanent resting-place and be better replaced by speaking of a duty to act fairly. But, that latter phrase must not in its turn be misunderstood or misused. It is not for the courts to determine whether a particular policy or particular decisions taken in fulfilment of that policy are fair. They are only concerned with the manner in which those decisions have been taken, and the extent of the duty to act fairly will vary greatly from case to case as indeed the decided cases since 1950 consistently show. Many features will come into play including the nature of the decision and the relationship of those involved on either side before the decision was taken.

It seems to us that counsel for the appellant had obviously not had the benefit of Lord Roskill's advice which in our view is regrettable and it is in order for us to say that it behoves all lawyers who wish to specialize in the field of administrative law amongst other fields of law, to heed Lord Roskill's caution and understand the scope and content of this phrase so as not to misunderstand or misuse it.

On the second issue — that the appellant be given the right to be heard orally in the form of an inquiry where witnesses may be called to be examined and cross-examined by his counsel — we are concerned with the basal consideration whether the words 'opportunity of being heard' connotes an oral hearing. What amounts to 'hearing' in the context of the rule of natural justice or GO 23 or art 135(2) of the Federal Constitution has been judicially considered and decided in many cases. This question was raised and argued in the case of *Local Government Board v Arlidge*,[9] and again in the case of *Kavanagh v Chief Constable of Devon and Cornwall.*[10] *Jeffs v New Zealand Dairy Production and Marketing Board & Ors.*[11] Nearer home the authority for the proposition that 'hearing' does not connote oral hearing and that the right to be heard does not entail an obligation to hold an inquiry was decided in the case of *Najar Singh v Government of Malaysia*[1] which, on appeal, was confirmed by the Privy Council in *Najar Singh v Government of Malaysia.*[1] Another Privy Council case of *Zainal bin Hashim v Government of Malaysia*[2] approved and adopted *Najar*'s case[1] on this

point. Again, the same question was raised and decided in the same way in the case of *A-G v Ryan*.[12]

We do not consider it necessary to review all the authorities and it is sufficient to refer only to the Privy Council case of *Najar Singh v Government of Malaysia*.[1] Viscount Dilhorne who delivered the judgment of the Privy Council in that case at p 205 explained the meaning of the words 'being heard' in the following words:

> In this passage which was cited by counsel on behalf of the appellant, the context shows that the words 'being heard' meant 'being heard orally' but this passage is no support for the proposition that unless there is an oral hearing, there is a denial of natural justice. Indeed it points in the opposite direction. What is important is that the officer concerned should have a full opportunity of stating his case before he is dismissed. The Chapter D Regulations 1969 provided this and the appellant availed himself of the opportunity, though as the content of his representations was not disclosed, their Lordships are unable to say whether he presented a case of substance.
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> In the circumstances the plea by the appellant that there was a denial of natural justice must in their Lordships' opinion be rejected. As this plea was put forward, their Lordships have dealt with it though as the Regulations, which have the force by law, lay down a detailed procedure which was followed in this case, their Lordships do not consider that such a plea was really open to the appellant.

The Privy Council thus confirmed the decision of the Federal Court on the same issue. Incidentally, Viscount Dilhorne also delivered the judgment in *Zainal*'s case.[2] Suffian CJ (Malaya) (as he then was) in the Federal Court case of *Najar Singh v Government of Malaysia & Anor*[1] reviewed various authorities and dealt extensively with the meaning of the words 'the right to be heard' and decided that in the circumstances of that case, an oral hearing was unnecessary as the defendants had given the plaintiff a reasonable opportunity of being heard.

There should not be anymore lingering doubt as to what the phrase 'right to be heard' or 'opportunity of being heard' mean at common law or in the statute, and it must be accepted that the issue has been settled, as well as can be on the authorities cited above. Therefore, this point is *cadit quaestio*.

However, counsel for the appellant attempted to distinguish the appellant's case on the facts and not on the law from the authorities that have been cited above. It was consistently and strenuously argued that in applying GO 26 in dealing with the appellant's case the respondent should have conducted an oral inquiry since it was contemplated to dismiss him and, dismissal, being a serious matter affecting his livelihood, it was reasonable for him to expect that there should be an oral hearing. Counsel also particularly argued that there were special circumstances in his case which merited an oral hearing, and therefore, it should be distinguished from all the other authorities cited above. It would seem that counsel did not dispute that the concept of the 'right to be heard' did not necessarily mean the right to be heard orally is correct, but was making a proposition that where a person's livelihood was at stake, as here, it was necessary for the

A disciplinary authority to give the person the right to be heard orally as an exception to the general rule.

He cited the Federal Court case of *Najar Singh v Government of Malaysia*[1] as an authority for his proposition, relying on the converse of Suffian CJ's ruling that in the circumstances of that case an oral hearing was unnecessary. The passage of the learned Chief Justice's judgment in that case appear on p 141, and is in the following words:

> *There is no evidence here that the plaintiff ever demanded an oral hearing before his dismissal. If he had and been refused, then probably he would have had a stronger case,* but as it is he is in the same weak position as Mr Fernando in *Ceylon University v Fernando* [1960] 1 WLR 223 where Lord Jenkins, giving the advice of the Privy Council, quoted with approval at p 232 the following words of Harman J (as he then was) in *Bryne v Kinematograth Renters Society Ltd* [1958] 2 All ER 579:
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> > 'What then are the requirements of natural justice in a case of this kind? First, I think that the accused person should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and, thirdly, of course, that the tribunal should act in good faith. I do not myself think that there really is anything more.'
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> Here the plaintiff does not say that he did not know the nature of the accusation made against him by Government; he was given an opportunity to state his case, albeit in writing; and he does not say that the defendants did not act in good faith. His only complaint is that he was not given an oral hearing; *but there is no evidence that he ever asked for one either before his dismissal or soon thereafter. Indeed he waited a year before filing his suit.* (Emphasis added.)

In that case, when the learned Chief Justice said 'in the circumstances of that case' he was only referring to the fact that there was no evidence that the plaintiff ever demanded an oral hearing before his dismissal and that if he had and been refused, then probably the plaintiff would have a stronger case. On this point, it is interesting to note that Lord Bridge of Harwich in *Lloyd v McMahon & Anor*[13] at p 706 made the same dictum as the learned Chief Justice in the following words:

> If any councillor had wanted to put forward his own independent and individual grounds in rebuttal of the charge of wilful misconduct against himself, I have no doubt he would have done so. *If any had asked to be heard orally and the auditor had refused, there would have been clear ground for a complaint of unfairness.* (Emphasis added.)

Lest we forget, in that case his Lordship was dealing with judicial review at common law and the passage above does not apply to a case regulated by statutes or subsidiary legislation which have legislative effect.

But counsel for the appellant had something else on his mind when he argued repeatedly that there were special circumstances in the instant case to warrant an oral hearing. He manifestly did not argue that the appellant had asked for an oral hearing but was refused. When pressed for an answer as to what he meant by 'special circumstances', counsel told us from the Bar that the respondent had extracted other statements from Chai Swee Ching @ Chua Swee Seng @ Tee Kia and elicited further information which was, in his view, prejudicial to his case, but he was not called upon

to correct, explain or contradict the statement. We had already adverted to this aspect of the case when dealing with the issue of 'unreasonableness'. There was no evidence from the affidavit of the appellant nor from the respondent that this statement was in fact taken into consideration by the respondent, and influenced him in arriving at the decision to dismiss the appellant. In our view, this argument is untenable and we accordingly reject it.

There was here no question of the respondent failing to comply with the provisions of GO 23 and GO 26. Besides, the appellant did not complain that GO 26 was not complied with nor that the provision of this General Order is void for some well-established principles of constitutional or administrative law. Following the procedure set out in GO 26 the respondent had correctly sent him a show cause letter dated 1 March 1990 following closely the provisions of paras 1, 2 and 4. The show cause letter set out the grounds on which it was proposed to dismiss the appellant and invited him to furnish the respondent with a written statement which also was accordingly furnished in great detail, apparently, after having had the benefit of the advice of a lawyer. Only when the respondent was satisfied that the written representation did not exculpate the appellant did he decide to dismiss him. Under para 4 of the said General Order, only if the respondent considers that the case against the appellant requires further clarification that he is obliged to appoint a committee of inquiry. In such an event, both parties may be legally represented. Under the circumstances, the procedure adopted by the respondent, in our view, did not in any way involve prejudice to the appellant. In this respect, it would be illuminating to reproduce a passage in the judgment of Lord Bridge of Harwich in *Lloyd v McMahon*[13] as it is relevant to the issue under consideration. At p 702, Lord Harwich said:

> My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well-established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness. It follows that the starting-point for the examination of all the appellants' submissions on this aspect of the case is the Act of 1982 ...

Similarly, in this case, we have examined the relevant provisions of Ch D of the 1980 General Orders, and it is beyond dispute that these provisions have been assiduously followed by the respondent, and having regard to all the authorities cited earlier on an oral hearing or inquiry under the circumstances of this case was not justified. In dealing with Ch D of the 1980 General Orders we remind ourselves that we are dealing with General Orders that have legislative effect and we must guard ourselves against adding words into them which were never intended. In this regard, we

A found support in the passage of the judgment of Barwick CJ in *Twist v Randwick Municipal Council*[14] at p 110:

> ... if the legislation has made provision for that opportunity to [be heard] to be given to the subject before his person or property is so affected, the court will not be warranted in supplementing the legislation, even if the legislative provision is not as full and complete as the court might think appropriate. Thus, if the legislature has addressed itself to the question whether an opportunity should be afforded the citizen to be relevantly heard and has either made it clear that no such opportunity is to be given or has, by its legislation, decided what opportunity should be afforded, the court being bound by the legislation as much as is the citizen, has no warrant to vary the legislative scheme.

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C As in *Najar Singh*'s[1] and *Zainal*'s case[2] we are constrained to reject the plea of denial of natural justice as canvassed by counsel for the appellant as being without merits.

The appeal on both grounds is dismissed with costs, and the deposit is to be paid to the respondent on account of taxed costs.

D *Appeal dismissed.*

Reported by Prof Ahmad Ibrahim

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